Alabama, which provides that, "the wife shall not directly or indirectly become surety for her husband." *Held*, that the capacity of Mrs. Chapman to contract must be determined by the law of the state where the contract was executed. *Union National Bank* v. *Chapman* (1902), 169 N. Y. 538, 57 L. R. A. 513.

The courts seem to be divided in regard to the law controlling such contracts. Some courts hold that the law of the place where the contract was made controls. *Scudder* v. *Union National Bank*, 91 U. S. 406, 23 L. ed. 245; *Voight* v. *Brown*, 42 Hun, 394; *Hill* v. *Chase*, 145 Mass. 129; *Milliken* v. *Pratt*, 125 Mass. 374. On the other hand it seems that there was no contract in this case, until the note was negotiated in Illinois; and that the law of the place where it was to be performed should control. *Thompson* v. *Taylor*, (1901), 66 N. J. L. 253, 54 L. R. A. 585; *Rahway Nat. Bank* v. *Brewster*, 49 N. J. L. 231, 12 Atlantic Rep. 769; *The Phœnix Mut. Life Ins. Company* v. *Simons*, 52 Mo. App. 357; STORY, CONFL. LAWS, Sec. 103, 280. The general rule in these cases, is that the law of the place where the parties intended the contract to be performed, controls. *Grand* v. *Livingston*, 158 N. Y. 688, 53 N. E. 1125.

CONSTITUTIONAL LAW—BILL OF LADING—CONCLUSIVE EVIDENCE.—A statute required railway companies to provide scales for the weighing of hay, grain, etc. shipped by the carload, and made the company responsible for the full amount of the shipment. It further provided that in an action against a railway company for a failure to deliver any such hay or grain, the bill of lading should be conclusive proof of the amount received by such railway company. In an action to recover for a shortage of hay, *Held*, that the statute was unconstitutional *Missouri, Kans. & Texas Ry. Co.* v. *Simonson* (1902), 64 Kans. 802, 57 L. R. A. 765, 68 Pac. R. 653.

Four of the seven justices thought that the statute denied the railway company due process of law, in that it deprived the courts of their judicial power of determining the weight and sufficiency of evidence. That the legislature may establish a prima facie rule of evidence is well settled: *Pa. Ry. Co.* v. *McCann* (1896), 54 Ohio St. 10, 31 L. R. A. 651, 42 N. E. 768, 56 Am. St. Rep. 695; *Chicago, etc. Ry. Co.* v. *Jones* (1894), 149 Ill. 361, 24 L. R. A. 141, 37 N. E. 247, 41 Am. St. Rep. 278; *State* v. *Yardley* (1895), 95 Tenn. 546, 34 L. R. A. 656, 32 S. W. 481; *Meadowcraft* v. *People* (1896), 163 Ill. 56, 35 L. R. A. 176, 45 N. E. 303, 54 Am. St. Rep. 46; *People* v. *Cannon* (1893), 139 N. Y. 32, 63 Hun, 306, 18 N. Y. Supp. 25, 34 N. E. 759, 36 Am. S. R. 668; *State* v. *Mitchell* (1892), 3 S. D. 223, 52 N.W. 1052. As to the power of the legislature to establish a conclusive rule of evidence, the court says, "We do not intend to rule that there are no classes of acts or contracts that may not be made conclusive upon the parties thereto, by the legislature, but we do intend to hold that it is incompetent for the legislature to make that conclusive of the fact and character which does not in reality express a contract because of fraud or mistake that may be made therein." But it is difficult to imagine a class of acts or contracts not liable to fraud or mistake. Fraud would be a defense under any such statute, and, as the minority points out, the courts themselves reject evidence of mistake in case of sealed instruments. The cases relied upon by the court to sustain the proposition that the legislature cannot establish a conclusive rule of evidence are *Little Rock, etc. Ry. Co.* v. *Payne* (1878), 33 Ark. 816, 34 Am. R. 55; *Meyer* v. *Berlandi* (1888), 39 Minn. 438, 1 L. R. A. 777, 40 N. W. 513, 12 Am. S. R. 663; *Wantlan* v. *White* (1862), 19 Ind. 470; *Chicago, etc. Ry. Co.* v. *Minnesota* (1889), 134 U. S. 418, 33 L. ed. 970, 10 Sup. Ct. Rep. 462, 3 Inters. Com. Rep. 209; *Felix* v. *Wallace County* (1900), 62 Kans. 832, 62 Pac. R. 667, 84 Am. S. R. 424.

All are distinguished by the three dissenting judges, and rightly, it would seem, as involving acts that were either accidental, or within the control of other parties, and not within that of the party against whom the rule was sought to be enforced, while in the principal case, the act of the railway company itself fixed the weight, and the statute simply estopped it from disputing its own contract. *Orient Ins. Co.* v. *Daggs* (1899), 172 U.S. 557, 43 L. ed. 552, 19 Sup. Ct. Rep. 281; COOLEY'S CONST. LIM. 5 ed. 453. And a similar statute has been held not to establish a mere rule of evidence but to change the legal effect of the contract evidenced by the bill. *Hazard* v. *Ry. Co.* (1889), 67 Miss. 32, 7 So. R. 280.

CONSTITUTIONAL LAW—EMINENT DOMAIN—RIGHT TO COMPENSATION BEFORE ENTRY.—An act gave to passenger railways incorporated thereunder the right to use the tracks of any other company, for a distance of twenty-five hundred feet, to construct a loop on its own line, at the end thereof. Five viewers were to be appointed on the application of the petitioning corporation, in case of disagreement, to assess damages and report the same to the proper court. The right to appeal and final hearing, however, lay in the court of common pleas. Pending such hearing, upon payment of the sum assessed by the viewers into court, the right to the use of such tracks was to vest in the petitioning party, the sum paid in to await final judgment. On appeal from a decree appointing viewers and approving a bond conditioned for the payment of damages. *Held*, that the statute was unconstitutional. *Petition of Phila. etc. Ry. Co.* (1902), — Pa. St. —, 53 Atl. Rep. 191.

The constitutional provision held to be contravened, is the one that, in eminent domain proceedings, compensation shall "be paid or secured before" a taking, injury, or destruction. The security afforded by the act in question was adjudged insufficient. In another recent case the statute involved permitted the plaintiff, during the proceedings, to obtain an order to take possession of the property upon paying into court sufficient money for compensation or damages, the defendant having no right to the money until final award. On writ of prohibition to prevent the making of such an order. *Held*, that the statute was unconstitutional. *Steinhart* v. *Superior Court* (1902),— Cal. —, 70 Pac. 629. The constitution provided that compensation should be "first made or paid into court for the owner." The court argue that a man cannot be said to have been compensated, nor can money be regarded as having been paid into court for him, until he may take it. Whether compensation can be first demanded as a condition precedent to entry in eminent domain proceedings, is a question upon which the authorities are in conflict, and in many instances are irreconcilable. Constitutional provisions have attempted to settle the difficulty in many of the states as in the principal case, but what is a sufficient security under them, is a point of difference. See *Harrisburg Road Co.* v. *Ry. Co.* (1896), 177 Pa. S. 585, 35 At. R. 850, 34 L. R. A. 439; *Backus* v. *Depot Co.* (1898), 169 U. S. 557, 42 L. ed. 853, 18 Sup. Ct. Rep. 445. In the absence of such a provision, the weight of authority is that compensation need not precede entry, if adequate security for payment is provided. LEWIS, EMINENT DOMAIN, 2 ed. Vol. 2, Sec. 456; *Cherokee Nation* v. *Kan. Ry. Co.* (1890), 135 U. S. 641, 34 L. ed. 295, 10 Sup. Ct. Rep. 965; *Commissioners* v. *Bowie* (1859), 34 Ala. 461; *Cairo, etc. Ry. Co.* v. *Turner* (1876), 31 Ark. 494, 25 Am. R. 564; *State* v. *Baker* (1884), 20 Fla. 616; *Wellington, etc. Ry.* v. *Cashie* (1895), 116 N. C. 924, 20 S. E. 964; *Orr* v. *Quimby* (1874), 54 N. H. 590; *State* v. *Otis* (1893), 53 Minn. 318, 55 N. W. 143; *Saunders* v. *Ry. Co.* (1898), 101 Tenn. 206, 47 S. W. 155; *Ferris* v. *Bramble* (1855), 5 Ohio S. 110; *Foster* v. *The Bank* (1884), 57 Vt. 128. Although the rule is open to just criticism, and the contrary holding has a strong following. LEWIS EMIN-